LIBRARY
SUPREME COURT, U. S

FILED
NOV 24 1967
JOHN F. DAVIS, CLERK

APPENDIX VOL. II.

In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 73.

IN THE MATTER OF JOHN RUFFALO, JR.,

Petitioner.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

Petition for Certiorari Filed March 24, 1967.

Certiorari Granted October 9, 1967.

TABLE OF CONTENTS.

Appendix on Writ of Certiorari.

VOL. I.

The Docket Entry 1

A. Opinion of the Supreme Court of Ohio, 176 Ohio St. 263 ..... 1a

B. First Memorandum Opinion of the United States District Court, 249 F. Supp. 432 ..... 16a

C. Opinion of the United States Court of Appeals for the Sixth Circuit, 370 F. 2d 447 ..... 53a

D. Second Memorandum Opinion of the United States District Court 86a

VOL. II.

E. Testimony From the Transcript of the Hearing Before the Board of Commissioners.

1. Testimony of John Ruffalo, Jr. 89a

2. Colloquies Relating to Charge B 122a

3. Testimony of Michael Orlando 137a

APPENDIX E.

TESTIMONY FROM THE TRANSCRIPT OF THE HEARING BEFORE THE BOARD OF COMMISSIONERS.

E. 1. Testimony of John Ruffalo, Jr.

(3)

Hearing Held, Beginning Wednesday, December 26, 1962.

BEFORE THE PANEL OF THE BOARD OF COMMISSIONERS:

C. R. BEIRNE, ESQ., Cincinnati, Ohio, Chairman;
JUDGE HENRY MIDDLETON, ESQ., Toledo, Ohio; and
BRUCE BIERCE, ESQ., Akron, Ohio, Members.

(3a)

APPEARANCES:

On Behalf of the Relator, The Mahoning County Bar Association:

DAVID C. HAYNES, ESQ., Youngstown, Ohio;
COMUS M. BEARD, ESQ., Youngstown, Ohio;
ARSENY A. MELNICK, ESQ., Youngstown, Ohio;
CHARLES P. HENDERSON, ESQ., Youngstown, Ohio, President of the Mahoning County Bar Association; and
PETER P. MICHAELS, ESQ., Youngstown, Ohio, Secretary of the Mahoning County Bar Association.

On Behalf of the Respondent, John Ruffalo, Jr., Attorney At Law:

JOHN RUFFALO, JR., ESQ., Youngstown, Ohio.
FERDINAND R. MONTANI, ESQ., Youngstown, Ohio.

* * * * *

(6) Chairman Beirne: Now, who will conduct the examination in this?

Mr. Haynes: Mr. Beard and I. That is, Beard and Haynes. I am Haynes.

Chairman Beirne: All right, sir.

Mr. Ruffalo: My name is John Ruffalo, and this is my co-counsel, Mr. Ferdinand R. Montani.

* * * * *

(12) Chairman Beirne: We are ready to go ahead and proceed on the hearing of the merits. Now, may I inquire, Mr. Ruffalo, what your wishes are with respect to whether this should be a private or (13) a public hearing? Under Rule XXVII you have the right to ask for a public hearing or you have the right to ask for a private hearing. If you don't request either, it will be a private hearing. That is up to you.

Mr. Ruffalo: Well, I would just as soon have it a private hearing.

Chairman Beirne: All right, sir.

* * * * *

(24)

Whereupon the Relator next called MR. JOHN RUFFALO, Attorney at Law, for cross-examination, and the witness, being first duly sworn, testified as follows:

CROSS EXAMINATION OF MR. RUFFALO by Mr. Haynes.

Q. Your full name is John Ruffalo, Jr.? A. John Ruffalo, yes.

Q. How old a man are you, Mr. Ruffalo? A. I am 49 years of age.

Q. Forty-nine. When were you admitted to the Ohio Bar? A. August of 1946.

Q. So you have been practicing a matter of 16 years? A. Yes, just about.

Q. And your father before you was John Ruffalo? A. John Ruffalo.

Q. When did he pass away? A. My father died February the 3rd, 1953.

Q. '53. Now, are you admitted in any other states, other than the State of Ohio, in the practice of law? A. No, I am admitted to the practice of law in the State of Ohio only.

* * * * *

(26) Q. You are acquainted with Michael Orlando? (27) A. Yes.

Q. How long have you known Mike Orlando of New Castle? A. Oh, I have known Mike for a number of years.

Q. Did you bring with you, sir, what I subpoenaed, any payments made by you to Mike Orlando for the last number of years? A. No, I have no—I have no record of receipts of pay, of payments. Mike Orlando has worked for me as an investigator, and I paid him out of a fund that I have in the office through the investigation department.

Q. Mike Orlando, you now say, worked as an investigator. Is it not a fact you had him as a solicitor to solicit personal injury cases for you for a number of years preceding the time which we are here about? A. No, Mike Orlando was not hired by me to solicit any cases.

* * * * *

(36) A. The first time I ever learned about the fact I was up for another disbarment was sometime later that year.

Q. What year? (37) A. Either later—the latter part of '61 or the first part of '62 is when I first learned about it.

* * * * *

(39) Q. All right. Let's talk a little bit about this fellow, Mike Orlando. He is the fellow that worked for the B. & O. Railroad, isn't he? A. That's right.

Q. He is the fellow that went up and was discharged by the B. & O. Railroad after a hearing before the National Labor Relations Board, or whatever it is that takes care

of that; did you represent him at that hearing? A. Well, I did not—he did not go to a hearing.

Q. All right. Now, then, he was charged with being an unfaithful employee. * * * A. He was not discharged.

Q. They had the hearing up there in Akron, as you well know, Mr. Ruffalo, didn't they, and he never appeared, and the case has been kept open for a year and a half for him to make a defense, which he has never made; you know that, don't you? A. Yes.

Q. Yes. A. But he is not discharged.

Q. He is not receiving pay from them, is he? A. He is not receiving pay from them, but he is not discharged.

* * * * *

(40) Q. When was his hearing had in Akron? A. Oh, I think sometime in July of '61.

Q. '61. And you know of your own knowledge that today he has never made an appearance there to contest those charges, has he? A. That he will.

Q. But he hasn't to this day, has he? A. But he will.

* * * * *

(41) Q. You do not have within your possession any record of payments of any kind that you made at any time for the period called for to Mike Orlando, Michael Orlando? (42) A. No.

Q. You don't have any? A. I made these payments, and they—

Q. Do you have receipts for cash advanced to him? A. I—I have no receipts. We did it particularly on a word basis.

Q. Then how did you account for them in your Income Tax statement? A. Well, we—

Q. It was charged as a business expense, wasn't it? A. It would be charged as a business expense, yes.

Q. How did you charge it off as a business expense if you don't have any records of any kind pertaining to it? A. Because we would have—keep the total amounts, and at the end of the year we would make our debits on the record, and then the Internal Revenue would check it, and then we would give it over—

Q. Now, Mr. Ruffalo, will you bring over your books, then, which will reveal these payments to him? A. They won't be shown by any books, because they were made by cash.

Q. Now, you are Mike Orlando's lawyer; aren't you one of them? A. Well, I don't know whether—

Q. How would you advise a client, then, if no record is ever (43) kept of the payments of the payer to the payee? A. Well, we kept it that way for the particular fact that he was working for the B. & O. Railroad, and we didn't want to get him involved with the B. & O. Railroad.

* * * * *

Q. Now, then, Mr. Ruffalo, I want some kind of a record for this Panel here to show payments made by you to Mike Orlando. Now, what do you have? (44) A. I don't have—I told you these things were made on a cash basis. The records were mainly kept there that way, and as soon as they were examined by the Internal Revenue Department, why, we got rid of them, because we didn't want to keep them, because of the fact we didn't want to involve Mike—

Q. Were you checked by the Internal Revenue? A. Yes.

Q. Who checked you? A. Oh, I don't know. Two or three of the different men.

Q. Tell us the names of the men who checked you from Wick Avenue, because I want to call them in here, Mr. Ruffalo, and I am going to do it. Now, you had better

give us the names. A. You've got no right to go into my Income Tax records or anything else.

Q. Well, we are going to try to do it, either one thing or the other. Either it is that or you give us the names and the amounts and the times that you paid Mike Orlando. A. I can't give you the time. I can give you the lump amount.

Q. Give us the amount. You naturally have an entry in your ledger as to when you gave it? A. I have no entry in my ledger as to when I gave it.

Q. Well, how do you keep books; don't you keep track of every penny that you pay out in the operation of your law office? (45) A. Certainly.

Q. All right. How much did you pay Mike Orlando for last year, '61? A. '61?

Q. Yes. A. I can't tell you that.

Q. How much did you pay him in '60? A. Oh, I don't—

Q. But you took it as a deductible expense on your Income Tax? A. Absolutely, yes.

Q. How much did you pay him, then? A. I can't tell you offhand, unless I would check my record book.

Q. Well, then, will you have the records over here? A. I will bring the amounts over to you.

Q. I want the books so we can have the time. A. Well, you can have the books if you want to, but you will find nothing in the books on it.

Q. Mike Orlando's name doesn't appear? A. No.

Q. Is that right? A. That's right.

Q. Now, tell us, Mr. Ruffalo, why doesn't Mike Orlando's name appear in there— (46) A. Because he wasn't—

Q. —as having received wages from you? A. Because he was an employee of the B. & O. Railroad.

Q. Because he was a B. & O. Railroad employee? A. And we didn't want it to be known that he was doing investigating work.

Q. In other words, Mr. Orlando did procure some cases for you— A. He did not procure.

Q. —against the B. & O.? A. He did not procure cases.

Q. He did not? A. He investigated cases for me; he did not procure them.

Q. And you paid him for it? A. I paid him for it, yes, for the investigation.

Q. And you don't have a record in your books to show how much or when? A. No, because the money would be drawn to cash.

Q. Drawn to cash. It would be by check, then? A. It would be drawn to me. I would draw the money out and keep a fund in the office and pay him—

Q. Mr. Ruffalo, why did you take such a circuitous route simply to pay an investigator out of your office? A. Because we didn't want it to be known, in case any question came out about it, that he was a B. & O. employee (47) who was doing investigating work for me.

Q. How do you pay Frank Guthrie? A. I pay him by check.

Q. As an investigator? A. He hasn't done much investigating for me—

Q. But you pay him by check? A. I pay him by check.

Q. And his name appears, and he endorses the check? A. But he isn't an employee of the B. & O. Railroad; he is an office manager and—

Q. Let us put it this way: Let us put it this way, then: Mike Orlando hasn't been an employee of the B. & O. Railroad for better than a year and a half, has he? A. That's right.

Q. You have paid him money in that interim? A. I have not.

Q. You have not? You haven't paid him a dime since he was discharged by the B. & O. in Akron? A. (Shaking head.)

Q. You mean that? A. No, I haven't.

Q. But you haven't any means at your disposal to show these three Commissioners here when or how much you paid Mike Orlando for his investigative services? A. I can show you the lump sum amounts; I can bring that (48) over and tell you exactly.

Q. What was the lump sum amount? A. Well, I can't tell you offhand. I mean some years he might make fifteen hundred dollars, some years he might make twenty-five hundred dollars, some years it might be thirty-five hundred dollars, but I can't tell you—it was paid to him on a work day basis.

Q. Let's go down a few of these New Castle cases, Mr. Ruffalo. Clyde E. Beighley, did he investigate for that case? That occurred, or the date of settlement was May 4, '61. A. Yes, sir.

Q. These are all New Castle cases in here. A. Yes, he did.

Q. But you are not an Ohio lawyer; you are not admitted to practice in New Castle, are you, or in Pennsylvania? A. No. I practice in Federal Court in Pittsburgh and have tried a number of cases in Federal Court in Pittsburgh. I have been down in the United States Circuit Court of Appeals in Philadelphia on two or three cases.

Q. Let's go down and see if you remember these cases. Clyde E. Beighley, New Castle, settlement date, May 4, '61. Do you remember that one? A. Yes, I do.

Q. Clifford Bishop, New Castle, settlement date, 4-20-61. Do you remember that one?

* * * * *

(50) A. Yes.

Q. Elijah Doster, New Castle, 2-4-60? A. Yes.

Q. Right? A. Well, the dates—I know the names; I can't tell you the dates.

Q. Well, we will eliminate the dates, because you have my word for them, that they are all subsequent to '53, and if you want to see this (indicating), you may see it. A. All right.

* * * * *

[Here follows a listing of twenty-eight claims, by the name of the plaintiff only.]

* * * * *

(53) Q. Mike Orlando; he has one pending against the Erie Railroad, hasn't he? A. No, he doesn't.

Q. Did you settle that one? A. The case has been tried and over with.

Q. When was it settled and disposed of? A. Oh, sometime around about the first part of this year.

Q. And you settled or tried that one? A. I tried it.

Q. And there was a verdict for him? A. Yes.

Q. Down at Pittsburgh? A. Down at Pittsburgh.

Q. That was for Mike Orlando? A. Yes.

Q. Joel J. Scalzo? A. Still pending.

Q. Still pending. Is that the B. & O.? A. Yes.

Q. Michael Shenker? A. That's still pending in the United States District Court.

* * * * *

(54) Q. What do you call this, all of these cases? A. What do you mean?

Q. Did they all come to you voluntarily? A. Those are under the F.E.L.A.

Q. Did they come to you voluntarily? A. Yes.

Q. Every one of those I have gone over? A. Yes.

Q. They walked into your office in the Mahoning Bank Building in Youngstown? A. Yes; they either came over or they called me.

Q. And you went over? A. Yes.

Chairman Beirne: Are these all in New Castle?

Mr. Haynes: Yes.

The Witness: You've got to remember some of these cases were my father's cases and they came into the office when my father was alive.

Q. Your father died in '53? A. My father died in '53, yes.

Q. And all these cases had happened subsequent to his death? A. No, they didn't. They did not.

* * * * *

Hearing Dec. 27, 1962. Same Appearances. Afternoon Session.

(412) Chairman Beirne: I might say we always take prior records under consideration in the event we find that the respondent in any case has been guilty of any other charges, not for the purpose of determining the guilt or innocence of the respondent—

Mr. Haynes: That's right.

Chairman Beirne: —but for the purpose of determining what recommendation should be made as to disciplinary action. There has always been a doubt in my mind as to the propriety of taking into consideration, in the primary consideration of guilt or innocence, the disposition of some prior charge.

* * * * *

(418) Mr. Haynes: Now, I asked Mr. Ruffalo pertaining to various transactions, including specifically one, Michael Orlando, to bring over his ledger sheets or what-

ever he had to show payment, whether it be to him or from that account. I would like at this time to see those records.

Mr. Ruffalo: I haven't been able to get them together or bring them over here, but I will have them for you.

Mr. Haynes: I want them before I rest, and actually, Mr. Ruffalo, I subpoenaed those.

Mr. Ruffalo: I told you I had no records in regards to Mr. Orlando.

Mr. Haynes: All right. Are you making a statement to this Panel, and may we stipulate that you have no financial statements or figures which will back up payment of any kind to Michael Orlando? Is that what you are telling this Panel?

Mr. Ruffalo: I am telling you that is so, except what we have recorded—

Mr. Haynes: All right.

Chairman Beirne: Wait until we see what he says.

Mr. Ruffalo: I have no checks or receipts or nothing that bears anything in writing in any ledgers or anything else referring to Mike Orlando.

(419) Chairman Beirne: What was it you were going to say, that you were going to look for something? What were you referring to?

Mr. Ruffalo: The only thing I could find that would possibly bear on it, if I could find them, would be evidence of what he reported on his income tax or—what he reported on his income tax.

Chairman Beirne: That is what you reported or what Orlando reported?

Mr. Ruffalo: What he reported.

Chairman Beirne: In other words, you were anticipating to ask Orlando to produce copies of his income tax records?

Mr. Ruffalo: No. I think I can find evidence over there as to what was sent in in order for him to pay his income tax.

Chairman Beirne: A statement or a report of the payments you made to him?

Mr. Ruffalo: Yes.

Chairman Beirne: A report to the Internal Revenue; is that what you are referring to?

Mr. Ruffalo: Yes, either mine or his.

Judge Middleton: You would send a report in of your own of what you paid him as it was earned? You would send those in to the Internal Revenue?

(420) Mr. Ruffalo: Yes.

Mr. Bierce: What did you base it on? That is really getting down to the crux of the thing. Where did you get your figures that you sent to the Government of the money you paid him?

Mr. Ruffalo: I got them on the basis of what I would pay him.

Mr. Bierce: But you don't keep that in your ledger. Where do you keep it?

Mr. Ruffalo: Well, we keep a record of it.

Mr. Bierce: What is your record? Do you keep a record of it?

Mr. Ruffalo: I would only keep a record of the total amount I paid him. That was all.

Chairman Beirne: What kind of a record is that?

Mr. Ruffalo: That would be the tax record that I would send in at the end of the year.

Mr. Haynes: That is what I want.

Chairman Beirne: The tax return?

Mr. Ruffalo: That would be a tax return, a little slip.

Chairman Beirne: The employers' report of payments to the employee?

Mr. Ruffalo: Yes.

Mr. Bierce: But where did you keep the record? (421) You didn't pay it in one lump sum at the end of the year; you paid him some as you went along?

Mr. Ruffalo: I paid him some as we went along.

Mr. Bierce: All right. Where did you keep the record of those payments?

Mr. Ruffalo: He would present me with the amount and keep the record himself.

Mr. Bierce: And you would never keep a record?

Mr. Ruffalo: We worked on our word and on our own particular honesty and the understanding that we had, and that is the way we worked.

Mr. Bierce: Did you do that intentionally?

Mr. Ruffalo: That was done because of the fact that he worked for the B. & O. Railroad, yes, and we didn't want anything coming up that might crop up as a result of being or becoming—that is, to the company, of being directed to the question of the company finding out about it, because it might have had some consequences in regard to his job, and that is why it was done. It wasn't done for any other reason.

Mr. Bierce: You say at the end of the year he would tell you a certain figure as being the amount that you would pay, and you would, as you say, make out the report (422) to the Internal Revenue that you had paid so and so, so many dollars during the year. How do you know the figure he gave you was correct?

Mr. Ruffalo: He would keep a record of it.

Mr. Bierce: I know, but how did you know it was correct? You are the one who was certifying that you paid that.

Mr. Ruffalo: He would show me this record he had, and each time he would show me that record I would pay

what he had there, and we would come to an accounting at that time, and I told him at the end of the year, "We are going to have to pay income tax on this thing, and I am going to have to submit so much, and you keep the record."

Mr. Bierce: All right. Let me ask you this: You take in so many dollars a year; I mean your income is something you have got to keep a record of. Now, then, your income, the amount you get, you have to keep a record of it, and that means you have got to show where the rest of it went when you return these amounts as income on your tax return, and the amount that you took in, the gross amount. Now, then, how can you substantiate those payments if you don't keep a record of it?

Mr. Ruffalo: I keep only the record that he would have, and if there was any question about it, I would get that from him and show it to the Internal Revenue (423) Department, and, if necessary, I would get an affidavit or whatever we needed in order to prove it. It has never been questioned. The Internal Revenue people have said, "Well, we can understand why you do not want this shown."

Judge Middleton: Are you audited every year by the Revenue?

Mr. Ruffalo: Yes, I am. Mr. Orlando's income tax return, in so far as I know—and I have seen some of them in the past years—he has listed that as an investigation, and every item is put down there and everything is itemized on that particular return.

* * * * *

(427) Mr. Haynes: Now, once again I would like to see this W-2 Form, or whatever it is that Mr. Ruffalo does submit on behalf of this man Orlando. I want this subpoena obeyed for the records that I subpoenaed per-

taining to the records of Mike Orlando. There must be some record of some kind somewhere that he has, just as Mr. Bierce was asking about. Now, I want it, your Honors, and we need it.

Chairman Beirne: Now, Mr. Ruffalo, I think we ought to see the records that you have, whether they show this or whether they don't show it, whatever records you have pertaining to your income and expenses during the years we are concerned with, which would be in nineteen—what time is Orlando's—

Mr. Haynes: I subpoenaed them, I think, from '56 up to date.

Chairman Beirne: Now, whether they have the name, Orlando, in them or whether they don't have, I think the records ought to be produced so that an examination of them can be made before this matter is concluded, any records that you may have that may relate to this particular question.

Judge Middleton: And if you don't keep records yourself but you adopt the records which Orlando keeps and (428) make them your own, then that is included in this demand, because those become your records, if you simply adopt Orlando's records and say, "I put the figures in from his records."

Mr. Haynes: Now, I am not going to rest my case until I get what I subpoenaed, and I subpoenaed them sufficiently well ahead of time. I subpoenaed them for the December 10th hearing, and I likewise subpoenaed them for this hearing, and now he has had ample time to produce what I want.

Chairman Beirne: Yes. You will produce the records, Mr. Ruffalo?

Mr. Ruffalo: I will produce the records. It will take an hour or an hour and a half.

Chairman Beirne: That is something you can do tonight, since we will not have a night session.

Mr. Ruffalo: I will have them tomorrow.

* * * * *

(429) Mr. Haynes: Now, then, so there will be no misunderstanding, if you can't find anything as respects the Orlando payments, then I want you to bring your own income tax payments for the same period of time, for the time in question.

Mr. Ruffalo: Well, I—

Mr. Haynes: Now, you can keep them secret; I am not interested in knowing how much you made, but I want to know the amount you paid your employees, as reflected on your financial statements.

Mr. Ruffalo: To my employees or Mike Orlando?

Mr. Haynes: All right, Mike Orlando. The income tax statement is what I want.

Mr. Ruffalo: You will have them. If I can't get them otherwise, I will show you, in so far as my income tax records reflect.

Chairman Beirne: All right. That is understood, then.

Mr. Haynes: Then I will not rest until such time as that is in the record.

* * * * *

Chairman Beirne: Now, I think we are ready for (430) the evidence on behalf of the Respondent.

* * * * *

Friday, Dec. 28, 1962. Hearing resumed. Same appearances.

(585) Chairman Beirne: Gentlemen, we may have misled counsel for both parties by a statement to the effect that we would consider Charge No. 1 as establishing a course of conduct. You may have implied from that re-

mark that we would take that finding of the Court into consideration in determining the guilt or innocence of the Respondent in the other charges.

Now, we are not going to do that. Charge No. 1 will be considered only in the event the evidence supports any one or more of the other charges in the complaint and we find that there has been a violation of one or more of the canons because of that evidence in support of those charges. If that occurs, we would then consider Charge No. 1 in making our recommendation to the Board as to what disciplinary action should be taken, but it would not be considered by us for any other purpose. Therefore, if the evidence in our opinion fails to support any of the charges after No. 1, No. 1 would have (586) no probative effect whatever.

* * * * *

(595) Mr. Haynes: Now, maybe we can expedite things if Mr. Beard and Mr. Melnick here could check the records Mr. Ruffalo brought with him this morning that we said we wanted to check, and they could be looking at them while we are proceeding.

Chairman Beirne: Will you do that, Mr. Ruffalo? They can check them while we are proceeding.

Mr. Ruffalo: I don't have them.

Mr. Haynes: Didn't we have an understanding he was to bring records in here, that if he didn't have a ledger sheet, he was to bring some record to show payment, his income tax statement, that I didn't want to know the (596) amount of income, but—

Mr. Ruffalo: Well, I—

Mr. Haynes: Let me finish. —to show exactly how much was paid to this man?

Chairman Beirne: Well, I think I was in on that myself.

Mr. Haynes: I think we did, yes.

Chairman Beirne: I asked for all of the records you would have, Mr. Ruffalo, over the period of time we are concerned with in this case, regardless of what you said they might show, so that they would be available to Counsel for the Relator to determine for themselves, not on the basis of what you said, but for themselves from the record here what your expenses were, in an effort to establish as to how payments were made to Orlando.

Mr. Ruffalo: These are the ones right here (indicating). These are the withholding statements over the period of time.

Chairman Beirne: My request was that you, in addition to those, bring your records of income and expenses, your office records. I think you understood that.

Mr. Ruffalo: I told you I had no records that indicated any payments to Mr. Orlando.

Chairman Beirne: You don't understand me. I didn't ask for that. I said to clear the matter up and to (597) avoid the bickering, if there was any, I suggested that you bring in all the records which you have relating to your financial transactions over the period of time we are concerned with, so that your records could be inspected by counsel for the Relator to determine, if they could, what payments if any had been made by you to Orlando. Now, I think I made that perfectly clear. I wasn't in any way limiting this. It was about as broad as you could get it.

Mr. Ruffalo: The subpoena said, sir, only to bring in the records—

Chairman Beirne: This was not related to the subpoena. This was a request by me as chairman of the panel.

Mr. Ruffalo: I don't think they should have a right

to just go down through my ledger and look at everything that is in my ledger.

Chairman Beirne: This doesn't involve the question of whether they have the right. This was a question of whether you would produce these for the Panel of the Board of Commissioners of the Supreme Court.

Mr. Ruffalo: I wish to object to it strongly. I think it is entirely improper. The only thing they are interested in here is the question of fact of whether I paid anything to Orlando. I have the slips here showing what I did pay.

(598) Chairman Beirne: I take it it is your position you refuse to produce the records I requested yesterday?

Mr. Ruffalo: No, I do not refuse to produce them, but it is entirely irrelevant. I have the records here to establish my payments, and just to go through my records here to find out what they can find of any kind of a nature that they might try to throw against me here in this thing and to amend their complaint on what I did here, I don't think they should do that.

Chairman Beirne: The point apparently you don't understand is, they are not bound by what you say the records do not contain. They may examine the records themselves to determine what those records contain. Now, you have said to this Panel that there have been payments varying from $1500 to $3500 to Orlando in different years.

Mr. Ruffalo: That's right.

Chairman Beirne: And the point at issue was that there must be some record of those payments. You said that Orlando had those records, and you said that the only records you had were these withholding statements.

Mr. Ruffalo: That's right.

Chairman Beirne: And then the point was pursued by Mr. Haynes that there must be some record of yours that you would have to show that. You said that there

was none. Now, it was my conclusion that they should have the right (599) themselves to look at your records to determine that and should not be foreclosed merely because you say the records won't show anything.

Mr. Ruffalo: The subpoena says I bring in the records of Mike Orlando.

Chairman Beirne: I won't comment on it any more. I think I made it clear.

Mr. Haynes: Mr. Beirne, here (indicating) is what I subpoenaed on two occasions: For the prior hearing and for this hearing.

(At this point there was a conference at the Bench out of the hearing of the reporter.)

Mr. Haynes: Judge, I believe I would like what you are asking stated for the record.

Chairman Beirne: I asked Mr. Ruffalo whether he had cancelled checks covered by these payments. Checks are mentioned in the subpoena.

Mr. Haynes: And what was Mr. Ruffalo's answer?

Chairman Beirne: What was your answer, for the record?

Mr. Ruffalo: My answer was: No.

Chairman Beirne: Just to clarify the record, then, I do think the record should show the papers have been produced, Mr. Haynes.

(600) Mr. Haynes: May I see them?

Chairman Beirne: And if it is agreeable to Counsel, I will just read them into the record.

Mr. Haynes: I would like to see them.

Judge Middleton: Those records have been produced. It doesn't mean all the records have been produced that were covered by the subpoena.

Mr. Haynes: Then I think we are entitled to the others, in addition. Now, what I want, in addition to this,

as I have said there, are the various items that would appear on the ledger for the kind of work done, the dates it was done, and the amounts, not these accumulated amounts. These don't mean anything as far as the record is concerned.

Chairman Beirne: Well, as far as they go, I would like to have the record reflect it.

Mr. Haynes: Yes, as far as they go.

Judge Middleton: What is the form number on it, W-2?

Mr. Haynes: This is Form 1099, '58, '59—well, here, your Honors, it is obvious there is something wrong with one. There are two for '59, and here "1959" is x'd out and "1957" was put in. Now, that could be done on a person's own typewriter.

Mr. Ruffalo: It was not done by any person's (601) typewriter.

Mr. Haynes: I am speaking to the gentlemen at the Bar here.

Mr. Ruffalo: That was done because of the fact that at the time I had a girl in the office who didn't know how to make out those slips. The Internal Revenue checked my books and found out they weren't made. I had to take them out and resubmit them to them and pay a dollar penalty for the ones I didn't submit, and that is perfectly in order with the Income Tax, Internal Revenue Department.

Chairman Beirne: Let's read them into the record.

Judge Middleton: That one, then, should be considered as '57?

Mr. Ruffalo: '57.

Mr. Haynes: And they will be identified and held here, too.

Chairman Beirne: Yes.

(Relator's Exhibits 7-A, 7-B, 7-C, 7-D, and 7-E marked for identification.)

Mr. Beard: Attorney Ruffalo, the Respondent in this case, has produced the United States Information Return for the calendar year, 1957, Form 1099, showing payment to Michael Orlando of 315 West Wabash Avenue, New Castle, Pennsylvania, and showing that he made a payment to him in the year 1957 of $2,950, which is (602) Relator's Exhibit 7-A.

Exhibit 7-B is Form 1099, United States Information Return for the calendar year 1958. To whom paid: Michael Orlando, 315 West Wabash Avenue, New Castle, Pennsylvania, $1,250. That is Exhibit 7-B.

7-C is Form 1099, United States Information Return for calendar year 1959. To whom paid: Michael Orlando, 315 West Wabash Avenue, New Castle, Pennsylvania, $1,273.37.

Chairman Beirne: Give me that again.

Mr. Beard: $1,273.37. That is the year 1959.

Exhibit 7-D: The year 1960, Form 1099, United States Information Return for calendar year 1960, paid to Michael Orlando, 315 West Wabash Avenue, New Castle, Pennsylvania, $3,829.25.

Form No. 1099, United States Information Return for calendar year 1961. To whom paid: Michael Orlando, 315 West Wabash Avenue, New Castle, Pennsylvania; the amount is $4,716. That is Exhibit 7-E.

Each of these exhibits show that these amounts were paid by John Ruffalo, Jr., 510 Mahoning Bank Building, Youngstown 3, Ohio.

Mr. Haynes: Mr. Ruffalo, you received a subpoena duces tecum by Mr. Bilger prior to when this hearing was set for December 10th, and you likewise received (603) another for this hearing, did you not?

Mr. Ruffalo: I didn't receive the first one.

Mr. Haynes: Well, then, you did receive the second one?

Mr. Ruffalo: They put the second one in my office door.

Mr. Haynes: Well, you received the subpoena duces tecum, and you knew what we were asking for in that; is that correct?

Mr. Ruffalo: Right.

Mr. Haynes: Yes.

Mr. Ruffalo: The second one was—

Mr. Haynes: Is this (indicating) an exact copy of the one you received?

Mr. Ruffalo: I would assume that it is, yes.

Mr. Haynes: Then I want to mark this as Relator's Exhibit 8.

* * * * *

Exhibit 8: Subpoena Duces Tecum.

To: John Ruffalo
510 Mahoning Bank Building
Youngstown, Ohio

You are hereby required to be and appear before The Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio at the Court of Appeals Courtroom, 4th floor, Courthouse, Youngstown, Ohio on the 26th day of December, 1962 at 1:30 o'clock P.M. to testify in a certain matter pending before said Board and also that you bring with you and produce at the time and place aforesaid all of your records, checks, disbursements, and receipts of any kind or nature, showing payments to one Michael Orlando of New Castle, Pennsylvania, for the years 1957, 1958, 1959, 1960, 1961, and 1962.

(697)

Friday, December 28, 1962. Afternoon session. Same appearances. Respondent's witnesses:

MR. JOHN RUFFALO, JR., Attorney at Law, offered himself as a witness in his own behalf, and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION OF MR. RUFFALO.

(698) By Mr. Montani:

Q. What is your name, please? A. John Ruffalo.

Q. You also go by "John Ruffalo, Jr."? A. I was originally identified as "John Ruffalo, Jr.," because of my father, whose name was also John Ruffalo, but since his death I have dropped the name, "Jr." and have carried the name, "John Ruffalo."

Q. Do you have a middle initial? A. I have no middle initial.

Q. What is your address, Mr. Ruffalo? A. My address is 700 Warner Road, Hubbard, Ohio.

Q. And your age? A. My age is 49.

Q. Where were you born? A. I was born in Youngstown, Ohio.

Q. And how long have you lived in Youngstown? A. Well, I—most of my life, except going away to school and the year or so—the four years I lived out in Poland and the year and a half I have lived out here in Hubbard.

Q. Poland and Hubbard are considered suburbs of Youngstown? A. Yes.

Q. And you went to the local schools, then? A. Went to Rayen High School.

(699) Q. Then what law school did you graduate from? A. I graduated from Youngstown University.

Q. In what year? A. In '45. I finished up about three or four subjects that I had there and then went down to

Cincinnati and took the cram course under Judge Gesswiler.

Q. And you were admitted to the Ohio Bar to practice law in Ohio in '45? A. In August of '46.

Q. August of '46. What was your father's occupation? A. What.

Q. What was your father's occupation? A. He was a practicing attorney in Youngstown, Ohio.

Q. For how many years? A. He had—he was admitted to the Bar in December, 1910 and practiced till 1953.

Q. In other words, he practiced in Youngstown for 43 years? A. That's right.

Q. Do you know how long he had his office on the Fifth Floor of the Mahoning Bank Building? A. Over 30 years.

Q. And that is the same suite of offices that you occupy? A. The same suite of offices that I occupy.

Q. Have you been admitted to practice in the Federal Courts? A. Yes, I have. I have been admitted to practice in the (700) Federal Courts.

Q. Now, let me ask you whether it is a fact or not that most of your business in law is on the side of the plaintiff? A. I am a Plaintiff's lawyer wholly and thoroughly, and I make no apologies for it.

* * * * *

Q. Is most of your practice in the personal injury field? A. Most of it is in the personal injury field.

Q. Your father's practice, was it also in the personal injury field? A. It was also mainly and almost wholly in the personal injury field.

Q. Were many of his cases cases in which railroads were the defendants? (701) A. The major portion of his practice of law was railroad cases.

Q. In your practice do you have many suits in which the defendant is a railroad? A. I have a good number of them; not anywheres near the number he used to have.

Q. Now, let me ask you this: Did your father have many clients from outside the Youngstown area?

Mr. Haynes: I object. I don't see where that has any bearing on the subject.

Mr. Montani: It is background.

Chairman Beirne: All right, go ahead.

A. Most of my father's business came from outside the City of Youngstown.

Q. Did he have a number of clients from in and around the City of New Castle, Pennsylvania? A. His name was as well known over there as it was in Youngstown.

Q. Have you also had a number of clients in and around the City of New Castle, Pennsylvania? A. Yes, I have. I have had a number of them.

* * * * *

(707) Q. Do you employ in your practice, Mr. Ruffalo, people that do investigating work for you? A. Yes, I do.

Q. Have you always employed certain people to do investigative work? A. Always employed certain people to do investigative work for me.

Q. Why is that necessary? A. Well, in order to prepare a case, the case has to be thoroughly investigated, particularly in railroad cases where railroaders are hard to locate. They are clannish; they have a code of their own, where they will not talk to anybody unless they know that they are a railroader or are sure that they are not connected with the company.

(708) Q. Is it the general practice for plaintiffs' lawyers to employ investigators in their offices? A. It is a general practice for a plaintiffs' lawyer to have investigators, just like it is for any other lawyer to have investigators.

Q. Is it a general practice in the profession? A. In the profession, to have investigators, yes.

Q. Now, Mr. Ruffalo, I am going to ask you some questions about a complaint filed by the Mahoning County Bar Association, the Relator, against you as Respondent. When did you receive this complaint? A. Some time after —I don't know whether it was a—a couple of days after the middle of September. Maybe the 15th, 17th, 18th of September, something like that.

Q. Of 1962? A. 1962.

* * * * *

(729) Q. All right. I think we will pass to Charge No. 8, and this involves the giving of money to (a) Clara Beighley and (b) Naomi Clark. Did you in fact loan any money to these two people? A. I loaned them money with the understanding that it would have to be paid back to me regardless of the outcome of the lawsuit.

* * * * *

Q. Did you offer Mrs. Beighley and Mrs. Clark money in order to obtain their lawsuits? A. I certainly did not.

Q. Going to Specification (A) here concerning Mrs. Clara Beighley, when was the first time that you gave her any money? A. Well, the first time I gave her any money was December (730) the 24th, 1957.

Q. Do you remember offhand when you obtained her case? A. I obtained her case on July 23rd, I believe the date was, of 1957.

Q. July 23rd of '57. And the first time you gave her any money was in December of 1957. Do you remember

the circumstances? A. She had been in my office a few days previous to that and had requested that I—had asked for some money for Christmas because she didn't have anything to eat.

Q. And you at that time gave her how much money? A. At that time I gave her $50. I sent her $50.

* * * * *

Q. Then subsequent to December of 1957 there were other times you gave her money, and to save time, if the Court please, I am not going to enumerate them, unless you want to. A. Yes. Over a period of four years I gave her $1,025.

Q. Over a period of four years? A. Four years, approximately four years.

Q. Let me ask you this, Mr. Ruffalo, in relation to Mrs. Beighley: Were you trying to give her money to tie up her (731) lawsuit or anything like that? A. Absolutely not. I never gave her money unless she asked for it or someone asked for her. Most of the times it was either because they had to buy coal or they had to pay taxes, or that they had to have food to live on. Mrs. Beighley had a crippled daughter or an invalid daughter that was living with her and she would often tell me that it was difficult for them to get along on the $67 a month that she got.

* * * * *

Q. Then tell us what your reason was for giving Mrs. Beighley this money? A. Well, the reason for giving it to her was that she was in dire need, and she would almost insist on it and plead with me for it, and if it wasn't her pleading, it was Mrs. Colangelo's pleading that the woman would not have coal for the Winter months or she didn't have any food and she was in dire circumstances, and the woman was really in that situation, and it was only because of that, out of humaneness, (732) that I felt that I should do it.

Q. All right. Turning to Specification (b) (8b), Naomi Clark, when was the first time you gave her any money? A. Well, the first time I—well, actually I might say that the first time I ever gave her any money, I believe it was the day that she came in my office and—or a couple of days afterwards, when she came in my office. It was sometime in the month of December; I don't recall just which day it was.

Chairman Beirne: What year?

A. Of '57. It might have been September or October. And she would come over to see me, and before she left, she said, "My car broke down, and I have it over here at a garage, and I need $15 with which to pay the garage man for it."

I reached in my pocket and gave her the $15. It was around noon or sometime like that, and that—I do not have that recorded here (indicating). I do have it on a slip of paper in my file on this case, but it is recorded as to what I have here in the office, that it occurred on October the 9th of '57.

Judge Middleton: I thought you said December.

Q. How much money over a period of how many years did you give to Mrs. Clark? A. Well, over '57, '58, and '59, and through '60, and to (733) the time that her case was settled, as of this record, I gave her $611.

Q. Now, as to this record, are you referring to the extra $15 you mentioned? A. No, the extra $15 isn't considered in here, and some other cash that I gave her from time to time is not considered in here.

Q. It would amount to about how much money? A. Actually it amounts to about $711 that I actually gave her.

Q. Besides this, or altogether? A. What?

Q. Besides what you have on this sheet, or altogether?

A. Oh, the whole total. Six hundred eleven plus another hundred.

Q. Plus another hundred. Seven hundred eleven over how many years? A. Over about, oh, three and a half years. And I might add that these were all at her request, with an understanding that they were to be paid back regardless of the outcome of the lawsuit, and that they were—on one occasion she needed food and clothing, one occasion was for gas, another one was for—to get her furniture out of storage so that she could set up housekeeping for her family.

Q. Were your reasons for giving the money to Mrs. Clark (734) any different from those that you stated you gave the money to Mrs. Beighley? A. No; only an act of humaneness, that's all.

* * * * *

(764) Q. You do have other cases in which railroads are not defendants? A. I do have other cases, other personal injury cases, other than railroad cases.

Judge Middleton: Is the bulk of your personal injury business against railroads?

The Witness: I would say the major portion of it.

Judge Middleton: The greater part of it?

The Witness: Yes, it is against the railroads.

By Mr. Montani:

Q. Mr. Ruffalo, do you employ or have you ever employed (765) Michael Orlando as an investigator? A. Yes, I have.

Q. What specifically has his job been? A. His job specifically has been to investigate cases which I turn over to him to investigate, particularly pertaining to railroad cases, to find witnesses, to obtain statements from witnesses, to help me in—and assist me in matters regarding

railroad knowledge and the operation of railroads, and on occasions to transport witnesses for me.

Q. When did Mr. Orlando, or over what periods of time did Mr. Orlando work for you? A. Well, he had, some time—around the latter part of '53 he did some work for me, not a great deal. He had done some work for my father before that, and at that time, why, he carried through on some of the work that he had done, some of the cases for my father.

In 1957 actually I asked him if he would investigate the cases for me, and that is about the time that he actually, you would say, was really wholly and completely investigating for me.

Q. How did you pay Mr. Orlando? A. I paid him on a cash basis, whatever he would submit at the particular time for what work he had done, either by the week or the month, two months, or three months, whenever he presented his bill.

(766) Q. What amount did he receive?

Mr. Beard: That has been gone into, Mr. Montani. Mr. Orlando testified $25 a day.

A. He was to receive $25 a day and his expenses. Sometimes his expenses would be 10 to $15, maybe a little bit more, depending upon how much traveling he did or what he had to do.

Q. On the W-2 Forms that you furnished him, the amount put there as compensation, did that include the expenses? A. That included his expenses.

Q. Did you try to hide from the railroad the fact that Mr. Orlando worked for you?

Mr. Haynes: Object. It has all been gone into, and it speaks for itself.

A. I did not try to hide—

Mr. Bierce: Overruled. I would like to hear the answer. What was the answer?

A. I said, no, I didn't try to hide it, in so far as he did—in so far as moving around or doing whatever he wanted to do.

Mr. Bierce: But you didn't keep any records because you didn't want the railroad to know?

The Witness: I didn't want the railroad to know that he was involved in investigating, because I didn't know what it would—what repercussions that would have on him. As far as I was concerned, there was no hiding of it.

(767) Mr. Bierce: That is why you say you didn't keep any records, though, of payments to him?

The Witness: Only for his protection. That was all.

* * * * *

(784) Chairman Beirne: Now, the next question is this now: Whether or not it is going to be necessary to come back here. We don't want to preclude you from offering any additional testimony with respect to any of these three amendments, but I do think that you ought to let (785) us know within some reasonable period of time. What would you say on this? Why don't you do that when you file your answer?

Mr. Ruffalo: Right offhand, I don't want to be held to this—

Chairman Beirne: I understand.

Mr. Ruffalo: —but right offhand I would say, on 11 and 12 I don't see anything further that I would be able to add to that, but on 13 I certainly—

Judge Middleton: That is the conspiracy?

Mr. Ruffalo: Yes. I certainly want to make a request on that to put testimony on by law or something.

Chairman Beirne: Well, we want you to have every opportunity. The thing back in my mind now frankly is that the issue with respect to 13 is one of law and not fact, and if you agree with that after reflecting on it in the next couple of weeks, you may decide it isn't necessary to have another hearing for that, and you will certainly be given the right to make any argument you may wish to make with respect to that in a brief, but you let us know, and send a letter down to John McMillan, the Secretary of the Board, stating your position with reference to this question, as to whether there will be any further testimony taken up here.

Mr. Ruffalo: By the answer date?

(786) Chairman Beirne: By the answer date.

Mr. Bierce: That is two weeks.

* * * * *

(789) Mr. Bierce: You will have until the 14th to file your answer and give the Panel your report on whether you need another hearing to introduce evidence, not for argument or not for briefs or anything of that kind, just whether you have got to have another hearing to amplify the record in this case. That doesn't mean just arguments on the law; that means if you have evidence to introduce.

* * * * *

(791) Mr. Bierce: The net result of what we have given as to time, as far as I can see, is by January 14th we will have been notified or John McMillan will have been notified whether there is to be a further hearing, whether or not there is to be a further hearing on the facts; not briefs, but facts.

* * * * *

E. 2. Colloquies Between Board Members, Respondent Ruffalo, and Counsel Relating to the Amendment of the Complaint, Charge 13.

Hearing on Friday, December 28, Morning Session. Respondent's case:

APPEARANCES:

The Panel of the Board of Commissioners:

C. R. Beirne, Esq.,
Judge Henry Middleton, Esq.,
Bruce Bierce, Esq.

On behalf of Relator:

David C. Haynes, Esq.,
Comus M. Beard, Esq.,
Arseny A. Melnick, Esq.,
Charles P. Henderson, Esq.,
Peter P. Michaels, Esq.

On behalf of Respondent:

John Ruffalo, Jr. Esq.,
Ferdinand R. Montani, Esq.

(655) Mr. Bierce: Have you, Mr. Ruffalo, any record, any itemized record of this man's expenses, the days they were accumulated, and the hours that he worked on these days?

Mr. Ruffalo: We worked on that basis for the particular reason that we didn't want this man to be accused of exactly what he was accused of, which he wasn't doing and which he did not do, but the fact was that I was trying to protect him. He was trying to help me as an investigator. He had certain knowledge, certain abilities that I needed, and I was trying to protect him, and that was the reason that we (656) worked this thing out this way. With any other person that has ever done any work for me, like Mr. Guthrie in my office, or anyone else, I have paid him

by check, but particularly for security reasons for this man, that was the reason we worked it this way.

Mr. Bierce: Mr. Ruffalo, here is a man working for the B. & O. Railroad; he is doing investigating work for you. You failed to keep the records. Was it because you knew that he was working in effect against his own employer, his other employer, and you were covering it up by destroying the records? Now, is that a fact?

Mr. Ruffalo: The fact was we knew that he as a railroad employee might be subject to some censure by his company if they knew that he was working for me as an investigator. They don't like it. But he has a perfect right to do that, as long as he does not go on their property or take photographs on their property or do anything like that. His time is his own.

Mr. Bierce: He was working on your cases that were against the B. & O. Railroad, wasn't he?

Mr. Ruffalo: He did on some, yes.

Chairman Beirne: On the Naomi Clark case, he said he did.

Mr. Ruffalo: Oh, yes.

(657) Mr. Bierce: He was working against the B. & O., and isn't that the reason that both of you have no records of the work that he did for you as an investigator; because he was working on cases against his own employer?

Mr. Ruffalo: That's right. That was to protect him.

Mr. Bierce: You knew that?

Mr. Ruffalo: Oh, yes, I knew it and—

Mr. Bierce: And you took part in it?

Mr. Ruffalo: There was nothing wrong with it. It was perfectly proper for him to be able to do those things.

Chairman Beirne: Mr. Ruffalo, do you think it is not improper for an employee to work on cases against his

employer, especially without his employer's knowledge?

Mr. Ruffalo: On his own time, in his time off, he has a right to do whatever he wishes.

Chairman Beirne: Even against his own employer? Do you think his allegiance to his employer ceases when he punches a timeclock?

Mr. Ruffalo: Lots of people hold down two jobs. Lots of people take another job—

Chairman Beirne: I am not questioning that. I am questioning the right of an employee to work with (658) a lawyer in suits against his own employer while he is on the payroll of his employer. Do you think there is nothing wrong with that?

Mr. Ruffalo: I don't see that there was anything wrong in what he was doing in investigating a case which he had not in any way brought into my office or had anything to do with.

Mr. Bierce: If you thought that, why didn't you keep all these records? Why did you destroy everything so there would be no records of anything, if you thought it was perfectly aboveboard and perfectly all right?

Mr. Ruffalo: I tried to protect him from any eventuality of this kind, that's all.

Judge Middleton: Because you knew it wasn't right; you knew that this was morally wrong?

Mr. Ruffalo: No, I didn't interpret it as being morally wrong.

Judge Middleton: I think so. So would you if it were put to you.

Mr. Ruffalo: I haven't been in the same situation, but I don't think there is anything wrong about a man doing something altogether different from the type of work he does on the railroad. He is a car bleeder on the railroad. That has nothing to do— (659) He was not out working

for some other railroad, nor was he out doing something or taking consignees away from them, or coal or anything like that.

Judge Middleton: He was doing worse; he was working against his own employer.

Mr. Ruffalo: Is there an "against" and a "for" in a lawsuit, I mean when evidence is to be brought out and produced? Is there something that is against anything? I don't see that it is being against.

Mr. Bierce: Mr. Ruffalo, if you were clear down in your own heart sure that there was nothing he was doing that was wrong, why did you need to, as you say—

Mr. Ruffalo: I didn't say—

Mr. Bierce: Just a minute—why did you say, as you say, that you needed to protect him?

Mr. Ruffalo: For his own benefit, not for mine.

Mr. Bierce: Not for yours. I am talking about him, not you. I am talking about him.

Mr. Ruffalo: Just in case that anything might come up.

Mr. Bierce: You knew that the B. & O. Railroad, if they knew he was investigating B. & O. cases for you, would raise the dickens about it, didn't you?

(660) Mr. Ruffalo: I didn't know that definitely, no.

Mr. Bierce: Did you have any suspicion that there would be anything else?

Mr. Ruffalo: I felt that there might be something, yes. That is the reason we did it this way, to protect him. For me, it didn't make any difference to me how he got paid or what the records were or anything else.

Mr. Bierce: I think that that is all I have in the way of questions.

Chairman Beirne: Is there anything else of this witness?

Mr. Ruffalo: I just want to say one thing here, your Honors. I feel that this man had a perfect right to do whatever he wanted to do on his off hours, and he isn't any different than any other person who goes out and gathers facts. He is a fact-finding person, and he may have a knowledge superior to mine in the railroading field, which I did not have and which—there isn't a railroad attorney, an attorney that is in the railroad business today, that doesn't have at least one or two or three of these men that they have working for them, either advising them or telling them about—

(661) Judge Middleton: You mean on the payroll of the railroad that they represent?

Mr. Ruffalo: There isn't one of them—the first thing they say to you when you get in this business is: "Get yourself a good railroad man so he can tell you what railroading is all about."

Judge Middleton: Who says this, this organization of special lawyers, the National Bar Association or who?

Mr. Ruffalo: No, the old-time lawyers, the people that know railroad law and have practiced railroad law. They have always had somebody that they could contact or somebody that they could reach out and talk to. I don't care whether—it happens to be that I do the majority of this type of work in this particular county and area, but I don't care whether it is in Pittsburgh or anywhere, I know that the top ones in Pittsburgh and the top ones in Cleveland and the top ones in Chicago, they all have one.

Judge Middleton: They all have an undercover man in the employ of the road?

Mr. Ruffalo: No, they have somebody that knows railroading and railroads.

Judge Middleton: And you think that is all right?

(662) Mr. Ruffalo: Well, I can see no wrong in a man doing it on his own time.

Chairman Beirne: Even against his own employer?

Mr. Ruffalo: Well, he is not really against his own employer.

Chairman Beirne: Well, that is my question to you. Even if it is against his own employer; you make no distinction?

Mr. Ruffalo: No, I don't see that it is wrong. It is his time. I think our concepts have changed from the time when a man went to work in the mill and he worked 14 hours a day and he was owned by the boss and—

Mr. Haynes: Are we trying the American economic system here right now?

Mr. Bierce: Have you anything further?

Mr. Haynes: Yes. Right now I have a motion to add a 13th complaint. As far as that witness is concerned, I don't want him any more.

Mr. Haynes: Now, then, I want to move that this Panel adopt as the 13th Specification the following:

That Respondent did conspire with one, Michael Orlando, and paid said Michael Orlando moneys for preparing lawsuits against the B. & O. Railroad, the employer of said (663) Michael Orlando, during all the periods of time extending from 1953 to July of 1961, well knowing that said practice was deceptive in its nature and was morally and legally wrong as respects the employee, Michael Orlando, toward his employer, the B. & O. Railroad Company.

Mr. Ruffalo: Oh, I object to that very highly. There is nothing morally wrong and there is nothing legally wrong with it.

Mr. Bierce: It is just a charge. You will have a chance to answer that, if you desire.

Mr. Haynes: I didn't hear you.

Mr. Bierce: It is just a request to amend the complaint. It is only a charge, and we have indicated we would permit amendments to conform to the evidence. But in granting such a request, we would not preclude you from making any defense you have to these additional charges.

Mr. Ruffalo: May I speak on this particular amendment now?

Chairman Beirne: Yes, sure. Sure, you may address yourself to that.

Mr. Ruffalo: I don't think this amendment should be considered by this Panel at all or allowed in this case. It has nothing to do with me or with Mr. Orlando's particular problem. There is nothing legally wrong about what (664) he was doing, and I did not conspire or did not do anything to hurt his company in any particular way. Just because he was an employee of that company, it didn't mean that he couldn't go out and do whatever else he wanted to on his free time. I don't think that has anything to do with this particular case, and I think it is entirely wrong to put it in.

Mr. Montani: Gentlemen, may I say one word?

Chairman Beirne: Yes, sir.

Mr. Montani: When does the end of these amendments come? I mean the last minute you are here, Mr. Haynes may bring in another amendment. I think this gentleman has a right to know beforehand what the charges are against him and be heard on those charges. Now, if there are any further charges after this hearing is over—

Chairman Beirne: Well, any request that is made will have to be based on evidence that is developed at this hearing.

Mr. Montani: I understand that, but will they ever get this over with?

Chairman Beirne: Well, I have indicated before, with respect to the other two charges, Nos. 11 and 12, that the fact that we were granting those doesn't preclude (665) you from offering any evidence you may have with respect to them, but I believe Mr. Ruffalo said, as far as 11 and 12 are concerned, he had no additional evidence.

Mr. Ruffalo: Your Honor, I don't, because the testimony of Angelo Medure took care of 11 and 12. I think that is true.

Chairman Beirne: Now, is there anything about this request which takes you by surprise or puts you in the position where you are not able to offer your defense at this time?

Mr. Ruffalo: Well, yes, it takes me by surprise, and as to offering a defense, I don't know what defense you could put up to such a thing as this. I mean there is nothing wrong with what I did.

Chairman Beirne: That is a different question, Mr. Ruffalo. The motion has been in substance to add Specification No. 13, which is an allegation that you conspired with Orlando, while Orlando was working with the B. & O., to work on cases against his employer. Now, whether that is right or wrong is something for us to pass on.

Mr. Ruffalo: It's an abstract thing, a theoretical thing, that you cannot defend.

Chairman Beirne: Well, do you have anything to (666) say with respect to the question of whether this does or doesn't conform to the evidence?

Mr. Ruffalo: Well, certainly I would need more time; I would need considerable time. I couldn't answer you here today; it would be impossible for me to answer it. I don't know what to say, gentlemen. I am speechless on this particular type of charge.

Chairman Beirne: Well, we will give you an opportunity to think it over, because we are going to take a recess for lunch now.

* * * * *

(667) Friday, December 28, 1962, Afternoon Session:

Mr. Beard: Mr. Ruffalo, as far as Specification No. 13 is concerned, there aren't any more facts. It is between you and Mike Orlando. I am speaking of the facts on Specification No. 13.

Mr. Ruffalo: There may be facts I don't know of. I can't say that.

Mr. Bierce: He can hardly say at this time that you don't have some facts to introduce, and he may have something to offer.

Mr. Beard: Of course, it is entirely up to him.

Chairman Beirne: That is just what I have been telling him: That if he requests time to meet this 13th Specification to get evidence, if he has any, that we would consider granting it. That is what we said just before you came in.

Mr. Haynes: I hadn't thought of that. Just a second.

(Conference at the counsel table.)

Mr. Beard: We will stipulate that as far as we are concerned, the only facts that we will introduce in support of Specification No. 13 are the statements (668) that Mr. Ruffalo has made here in open court and the testimony of Mike Orlando from the witness stand. Those are the only facts we have to support this Specification No. 13.

Chairman Beirne: All right. At the time we adjourned at noon there was a request to amend the complaint by adding Specification No. 13. We hadn't ruled, and I told Mr. Ruffalo he had an opportunity to consider

it. And the ruling will be that the request to amend the complaint to add Specification No. 13 will be granted.

Mr. Ruffalo, what if any request do you wish to make with respect to this development?

Mr. Ruffalo: Well, I fear I am going to have to have an opportunity to put on evidence, if I may, in defense of it.

I would also like the specification itself to be amended to read: For the periods of time extending from '57 to 1961.

These matters dealing here with the particular Specifications in the complaint before this Court deal with matters from 1957 to '61. Any matters before that time are not now particularly within the province of this Panel. And I would like to amend it in that respect.

Chairman Beirne: Mr. Beard, what do you have (669) to say about that?

Mr. Beard: The only thing I could say on that is the fact that Michael Orlando on the witness stand this morning said he has been employed by Mr. Ruffalo from 1953 to July, 1961, and that is the reason we used that period of time. It was his own witness.

Mr. Bierce: This is a complaint on matters in here dating from 1957. Is there any reason why you would desire not to change it to '57 on to the present?

Mr. Haynes: If it will expedite matters, that is all right. Make it '57.

Mr. Beard: All right, '57 on to '61.

Chairman Beirne: Let's change that to "'57," then.

Mr. Beard: All right.

Chairman Beirne: Now, anything else, Mr. Ruffalo?

Mr. Ruffalo: Of course, I want an exception to this, and I want an objection, and ask that it be stricken out as surprise, and I feel it is improper. I don't think it is a proper specification to be considered by this Panel under

the rules of this Court. I want a continuance in case I must put on any evidence in order to meet it.

Now, may I ask, if this matter goes through, will there be some hearing next week or at some future date, (670) or will we submit briefs, or what do we do?

Chairman Beirne: No. If you request an additional hearing because of the claim of surprise with respect to this particular specification of misconduct, then that request will be granted, and the time that we will come back here will be determined by Judge McMillan or the Board. But I will say this: That we will want to get back here fairly soon to move this case along expeditiously.

Mr. Ruffalo: If we do come back, the testimony will be limited and restricted to just the particular issue in this Specification 13?

Chairman Beirne: Yes, because that, as I understand it, is the only specification that causes you to request further time.

Mr. Ruffalo: If there is law, may I submit that law to you?

Chairman Beirne: Definitely.

Mr. Ruffalo: For your consideration?

Chairman Beirne: Definitely.

Mr. Ruffalo: Because the National Labor Relations Board has already ruled on this question.

Chairman Beirne: That is all right. Any law that you may have, we will take that into consideration. We are going to request briefs from both sides, so that (671) would be one item that we would want covered.

Mr. Bierce: You refer to the Board having ruled on something. On what? On the authority of granting a new specification?

Mr. Ruffalo: No, I am talking about the rules, about the rulings and opinions of the National Labor Relations

Board in regards to employees doing this type of work. They have already ruled on this.

Chairman Beirne: That is all right. You can cover that.

Judge Middleton: Do you think those rulings are broad enough to permit an employee to accept work with respect to his own employer, as distinguished from other employees?

Mr. Ruffalo: If I am correct in what I have discussed with railroad workers and other attorneys involving the same matter, there have been cases that have been decided in favor of the employee and—

Mr. Bierce: You can cover that in your brief. These are apparently just legal questions, and if you have something that shows that this is a perfectly proper relationship, we want to see it, and you will have time to put it in your brief before it is considered.

Mr. Haynes: Now, I want to lay emphasis (672) upon this one fact, so he will not be misled: Now, the only evidence we are depending upon is that from his own lips to you gentlemen and from Orlando. We don't have anything else to support it.

Chairman Beirne: We understand. Now, is there anything else?

Mr. Ruffalo: The only thing we want to say is, we made no admission of any conspiracy or anything like that, conspiracy or concealment, because there was no implied secrecy, and there was no secrecy.

Chairman Beirne: May I raise this question, Mr. Ruffalo: If I understand your position with respect to this particular specification, you don't deny that this practice was engaged in by Michael Orlando with your knowledge while he was being compensated by you with reference to cases that you had involving the B. & O.; your position

is more one of law than fact? Is that correct, or am I wrong on that? I don't want to lead you into something, if I am wrong in it.

Mr. Ruffalo: Well, I would say it is probably more a problem of law, yes. The fact is he did investigate some of these cases for me.

Chairman Beirne: Involving the B. & O.?

Mr. Ruffalo: Involving the B. & O.

(673) Chairman Beirne: While he was working with the B. & O.?

Mr. Ruffalo: He so testified.

Chairman Beirne: And that was during the period in question?

Mr. Ruffalo: That was in the period in question—

Chairman Beirne: From '57 to '61?

Mr. Ruffalo: '57 to '61.

Chairman Beirne: You are not admitting he solicited business; you are saying or you don't deny that he carried on the practice of investigating cases for you?

Mr. Ruffalo: I do not admit any solicitation on his part at all, that his activities were purely investigative activities.

Chairman Beirne: And bringing witnesses to court?

Mr. Ruffalo: He was transporting some of the witnesses to court.

Chairman Beirne: And conferring with you, as he testified?

Mr. Ruffalo: Advising me on matters pertaining to railroad operations, yes.

Judge Middleton: "What is a bleeder?" and so on? That is, he would tell you what a bleeder is, and so on? (674) I know what they are; you don't need to explain it to me.

Mr. Haynes: I fired on a railroad myself; I worked

on them. A bleeder is the fellow that takes the air out of the hoses.

Judge Middleton: Yes, I know. I mean that is the kind of thing he told you?

* * * * *

Friday, August 16, 1963. Hearing resumed.

BEFORE THE PANEL OF THE BOARD OF COMMISSIONERS:

C. R. Beirne, Esq., Chairman; and
Judge Henry Middleton, Esq. and
Bruce Bierce, Esq., Members of the Panel.

APPEARANCES:

David C. Haynes, Esq. and
Comus M. Beard, Esq. and
James W. Mumaw, President of the Mahoning County Bar Association,

on behalf of the Relator.

John Ruffalo, Jr., Esq., the Respondent;
Ferdinand R. Montani, Esq.;
John Chester, Esq.; and
Richard Grieser, Esq.,

on behalf of the Respondent.

(1021) Mr. Chester: May it please the Panel, at this time we rest our case.

Chairman Beirne: Both sides rest?

Mr. Haynes: You bet we rest, your Honor.

Chairman Beirne: Case submitted. Mr. Grieser, you said you wanted to make some comments at the conclusion of this case?

* * * * *

(1025) Chairman Beirne: Now, I want to say this: That this Panel, as all the Panels, does take into consideration any prior charges against a Respondent, not for the purpose of determining whether or not he is

guilty or innocent of the case before the Panel, but in determining, if they find he is guilty of any charge, what should be the recommendation so far as discipline is concerned.

* * * * *

(1030) Mr. Grieser: We move to dismiss that specification [No. 13] as a matter of law. And I want your Honors to consider this very carefully when I brief it, on the ground that the facts as stated, as distinguished from the conclusions reached by the Relator, do not constitute misconduct under the Ohio Supreme Court rule.

Chairman Beirne: No, that is not the question raised. What Orlando did was work with Respondent in connection with cases that the Respondent had as Counsel against the B. & O. Railroad—

Mr. Grieser: Some of those cases, yes.

(1031) Chairman Beirne: —at the same time that Orlando was employed by that railroad. There is no question of fact on that.

Mr. Grieser: There is no question on that, and I am prepared to, I think, demonstrate that as a matter of law that does not constitute misconduct on the part of the Respondent.

Chairman Beirne: And you will put that in your brief?

Mr. Grieser: Yes, sir.

Chairman Beirne: Well, on that, then, we will reserve ruling until we have read your brief on that question. So that is about the only one I know of that we haven't ruled on.

* * * * *

E. 3. Testimony of Michael Orlando.

Hearing on December 28, 1962. Respondent's witnesses.

(614)

MR. MICHAEL ORLANDO, called by Respondent, being first duly sworn, testified as follows:

Chairman Beirne: Will you state your full name and address, please?

The Witness: Michael Orlando; 315 West Wabash Avenue, New Castle, Pennsylvania.

Chairman Beirne: All right, you may proceed.

Mr. Ruffalo: This testimony will be in relation to Specifications Nos. 3 and 5.

DIRECT EXAMINATION OF MR. ORLANDO by Mr. Ruffalo.

Q. How long have you lived in New Castle? A. All my life.

Q. And where are you employed at the present time? A. At the present time I'm unemployed.

Q. And up until July of 1961 were you employed by the B. & O. Railroad? A. I was.

(615) Mr. Haynes: What year is that, please?

Mr. Ruffalo: July of 1961.

Mr. Haynes: July of '61.

Q. And were you suspended from your employment sometime during July of 1961 with the B. & O. Railroad? A. July of 1961. July the 21st, I was taken out of service.

Q. Some time prior to that time were you admitted to the hospital? A. I was.

* * * * *

(624) Q. Are you employed by me as an investigator? A. I am.

Q. How long have you been working for me as an investigator? A. I would say since 1953.

Q. And have you been working for me as an investigator since (625) 1957? A. I have.

Mr. Haynes: Well, he just said, "'53."

Mr. Ruffalo: Yes, I know he said that.

Q. Have you been employed by me in the year 1962 as an investigator? A. No.

Q. When was the last time that you were employed by me as an investigator? A. I—the last time was July the 21st—July the 18th.

Judge Middleton: This year?

The Witness: 1961.

Judge Middleton: I understood the witness to say that he is now an investigator. He didn't say that, then?

Mr. Ruffalo: Well, he isn't right at the present time. He hasn't worked for me since July, 1961.

Q. What was the reason for not being employed by me since 1961? A. Well, the B. & O. brought some charges against me, and over these charges, why, it caused me to be put in the hospital, and since then I have been under a doctor's care.

Q. Would you explain the basis, the wage basis, upon which you are employed by me as an investigator? (626) A. Well, I have cases that I investigate, and as I incur the expense, why—over a period of time I get my expense money, and from time to time, as the money is needed, I get it.

Q. Are you paid by the day or by the week or by the month? A. Well, I charge you so much a day and expenses.

Q. Well, how much do you charge me a day and expenses? A. I get $25 a day and expenses.

Q. What type of investigation do you do for me? A. I investigate practically all the cases that—

Q. All the railroad cases? A. All the cases. All the railroad cases, mostly railroad cases.

Q. What other services do you render for me? A. Well, I—we consult one another on lawsuits; I transport witnesses. I am with him—when he is filing these lawsuits, I mean as he is trying these lawsuits in Federal Court in Pittsburgh, Cleveland, Warren, whatever court, I am with him two or three days, four days, whatever time it takes.

Q. Do you contact witnesses? A. I contact witnesses.

Q. How many days a month would you say on an average that you do work for me? A. Well, I would say that offhand it would be, without (627) looking at the records, I mean, probably on the basis of 10 or 15 days a month.

Q. On an average? A. On an average.

Q. Now, in 1957 did I pay you the sum of $2,950 for investigation? A. That's right.

Q. Now, in 1958 I paid you the sum of $1,250, and what was that for? A. This was for investigating work.

Q. And in 1960 I paid you the sum of $3,829.25, and what was that for? A. This is for investigating work also. Some of this is a lapse from—

Q. Now, in 1959 I paid you the amount of $1,273.37, and what was that for? A. That's for investigating.

Q. And in 1961 I paid you the sum of $4,716, and what was that for? A. Well—

Q. What was that for? A. This was for investigating.

Q. Now, can you explain that amount of money there to me? A. Well, like I say, this—there was some of that—

there was a carry-over from one time to the other, and (628) when you and I settled up, that's what I told you that you owed me, the balance of the carry-over.

Q. When you stopped working for me in July of 1961— A. That's right.

Q. —a question arose— A. There was some money—

* * * * *

Q. Will you explain— A. Well, in this type of work it's like this: You go out after a witness; sometimes—I mean you have got expenses. I mean sometimes the witness is not there; you make frequent trips to get the witness, and I mean you just couldn't be running in the office getting money all the time. There was a backlog that I was owed, and when we settled up here, I had some money coming. I was in the hospital, and I figured it was a good time to settle up, so I had in the neighborhood of $3,000 coming, that's why this 4,716. We settled up for $2,000, but it's not all investigating work— (629) it's previous years.

Q. That was for previous years, and that was sort of a compromise on some of the—

Mr. Haynes: Now, I object to the leading form of this.

Chairman Beirne: Sustained.

Q. Was that in regards to some discrepancies in our account? A. That's right.

Q. And was there an adjustment made? A. There was an adjustment made.

Q. And you received that money by check? A. That's right.

Q. Now—

Judge Middleton: Now, what is the import of this last question? Did he receive $4,716.61, or didn't he?

Mr. Ruffalo: Oh, yes. He received—

Judge Middleton: You are talking about two thousand dollars and something here. You don't mean to vary this amount, then?

Mr. Ruffalo: No, the amount stays the same. We had a dispute, not a dispute, but some discrepancy in amounts that were owed, and we had been talking about them for some time before that and—

(630) Judge Middleton: I don't know; I am not interested in that. I just want to know if that is the figure as it stands.

Mr. Ruffalo: I lost my train of thought.

Judge Middleton: The last one you asked about was for the year 1961, forty-seven hundred and some odd dollars, and you established that there was $2,000 added to what he would otherwise have been paid because of a compromise and his claim was adjusted.

The Witness: That's right.

By Mr. Ruffalo:

Q. Would you explain as to how you would submit your record of payment to me? A. Well, as I did the work, I—and I would present my expense account for the work that I had done for that period, it could have been for a week, it could have been for two weeks, it could have been for a month, and I got my money.

Q. And would it sometimes run longer than a month? A. Sometimes it would run a couple of months; it would lapse over.

(631) Q. Would it ever extend beyond that? A. It was—I couldn't be running in there for money all the time, doing this type of work. I mean as you—

Mr. Bierce: Just answer the question and we will get along faster.

A. As I incurred the expenses, I kept a record of them, and when I went in to get my money, I would produce my record and I would get my money.

Q. Would you report this on your income tax? A. Absolutely.

* * * * *

CROSS EXAMINATION OF MR. ORLANDO
by Mr. Haynes.

Q. You worked for the B. & O. Railroad, Mr. Orlando, until July of 1961; correct? A. Right.

(632) Q. Were you working five days a week or 40 hours a week? A. Five.

Q. You worked for the B. & O., and you worked steadily from January 1st, '61 until July of 1961 for the B. & O., 40 hours a week? A. Right.

Q. You were paid, however, on the basis of $25 a day for the year 1961 for the first six months by Mr. Ruffalo, since you said you didn't work subsequent to July 18th for him; you worked what would amount to the equivalent of 187 days at $25 a day for him for the first six and a half months of '61? A. Twenty-five dollars a day and expenses.

* * * * *

(633) Q. Now, how, then, could you conceivably work 187 days for Mr. Ruffalo up until July 18 of '61 and work 40 hours a week for the B. & O. Railroad? Tell us. 187 days—

Mr. Bierce: You have asked the question. Let him answer.

A. That is the gross money that was taken out of that office, including expenses. That is everything.

Q. Look there (indicating). You reported that as fees and commissions; you didn't report that as expenses?

A. I reported this as my income tax. Wait a minute. This is the gross—

Q. You go ahead and explain it. A. I paid income tax on this.

Q. Why, sure, you did. A. Out of this I filed my expenses and—

Q. All right. You paid income tax on $4,716, didn't you? A. It's right there.

Q. Did you pay income tax on $4,716? (634) A. I did.

Q. Yes? A. I did.

Q. Yes. Well, then, you didn't pay anything on the expenses that were over and above this, did you? A. What expenses? That's the gross money that was taken for that year.

Q. Oh! A. The gross money that I took out, that he paid me.

Q. How much did you make from the B. & O. Railroad Company until July 19th, 1961? A. Thirty-three hundred dollars. In the neighborhood of $3300.

* * * * *

Mr. Ruffalo: He testified, too, that the amount included some back payments.

(635) Mr. Haynes: I don't care what it was paid for—

* * * * *

By Mr. Haynes:

Q. So you took in more from Ruffalo in 1961 than you took in from the B. & O. Railroad; is that right?

Chairman Beirne: Your answer, Mr. Orlando?

A. According to the records, yes.

Q. Yes. All right. A. But they are not—

Mr. Haynes: You have answered the question, Mr. Orlando. That's all I asked.

Chairman Beirne: He has a right to explain. The question was very broad, "You took in." Now, do you want to say something?

A. This is a gross amount. I don't know what he—this is the gross amount I took out for that. Out of that—that includes everything.

(636) Q. Mr. Orlando— A. Expenses and everything. That's the gross amount, wages, gasoline, everything, expenses.

* * * * *

(637) Q. Did you bring with you your expense records, and so forth? Did you bring any records with you? A. I didn't bring no records.

* * * * *

Q. Well, didn't John Ruffalo ask you to bring along your records today to further corroborate or substantiate what might be in his records about your employment? A. There's my records there (indicating).

(638) Q. These are records you had in your possession? A. No.

Q. Well, who had these? A. What?

Q. Who had these records up until this morning?

Mr. Ruffalo: They are mine.

Mr. Haynes: Now, wait.

Chairman Beirne: Don't interrupt him, Mr. Ruffalo. Go ahead.

Q. Who had these records in their possession prior to this morning? A. I didn't have them.

Q. You didn't have them. Had you ever seen them? A. I—

Q. Had you ever seen them? A. I had—no.

Q. Had you had duplicates of them of any kind? A. No.

Q. No. How did you know how much, then, to pay on your income tax?

Mr. Ruffalo: I object to it.

Chairman Beirne: Overruled. I think that is proper.

Q. How did you know how much to pay if you never had these records and you didn't know the exact amount? Can you answer (639) that one? A. I went in with my—

Q. How did you know how much to pay if you didn't have any records to indicate how much he paid you?

Mr. Bierce: Let him answer. Let him answer.

A. I went in with my records at the end of the year when it come income tax time. I had the records. He couldn't have possibly had the expense accounts; I had them.

Q. Well, didn't he keep a record of when he paid you; didn't he pay you by check in the usual course of business? A. He paid me by cash.

Q. Always by cash? A. That's right.

Q. And then you signed a receipt for him that you received that much? A. Sometimes, yes. Sometimes.

Q. Mr. Orlando, did you sign receipts for Mr. Ruffalo that you received these amounts of money that are represented by the gross amounts on each of these withholding receipts here? A. I did.

Q. Did you sign receipts? A. I did, yes.

(640) Mr. Haynes: Now, then, I want those receipts that he signed on behalf of Mr. Ruffalo this afternoon for those various amounts.

Mr. Ruffalo: He did not sign any receipts.

Mr. Haynes: He didn't sign any receipts? Which of you is telling the truth?

Mr. Ruffalo: I am telling the truth. He did not sign any receipts. I gave him cash.

* * * * *

(642) Q. * * * Now, then, during all of that period of time you were working a 40-hour week for the B. & O. Railroad, is (643) that right; for all of that period of time you were working a 40-hour week for the B. & O. Railroad? A. Right.

Q. Is that right? A. That's right.

* * * * *

(645)

RE-DIRECT EXAMINATION OF MR. ORLANDO
by Mr. Ruffalo.

* * * * *

Q. Can you tell me how many days off you have a week? A. Well, when I worked five days, I would have two days off.

Q. What days would you normally have off? A. Well, like Thursday and Friday, Monday or Tuesday, weekdays.

Q. And what are your hours of work? A. I work at night, from 11:00 to 7:00, 11:00 P.M. at night (646) till 7:00 A.M. in the morning.

Q. Are you able to work during the daytime on— A. I am.

Q. That time during the daytime is your time; is that right? A. That's right.

Q. Are you free to do what you want to do? A. I am.

Q. Have you ever solicited a case of the Baltimore & Ohio Railroad? A. I did not.

Judge Middleton: What is his work?

Mr. Ruffalo: What?

Judge Middleton: What was he doing for the B. & O.?

Mr. Ruffalo: Oh!

Q. What is your occupation for the B. & O. Railroad? A. I'm a car bleeder. A car bleeder.

Judge Middleton: Brakes?

Q. Car bleeder? A. Car bleeder. I take air out, bleed the trains as they come in.

Mr. Ruffalo: That's all.

(647)

RE-CROSS EXAMINATION OF MR. ORLANDO
by Mr. Haynes.

Q. Now, then, Mr. Orlando, you mentioned something here, that at the end of one year there was a discrepancy between what you said you had coming from Mr. Ruffalo and what he said he owed you, a little friendly argument; is that correct? A. That's correct.

Q. Did he have any records at that time to determine a true amount? A. No, he didn't.

Q. Did you have any records? A. It was my—what I kept, the records that I kept, yes.

Q. And from your records, why, you determined the true amount that he owed you? A. I told him that he owed me this much money.

Q. And that is what he paid you? A. And he didn't give me the full amount; we settled for an amount of money.

* * * * *

(651)

EXAMINATION OF MR. ORLANDO by the Panel.

By Mr. Bierce:

Q. I would like to ask a couple of questions of you, Mr. Orlando. Let's say we are back a couple of years ago and you are out doing some investigative work for Mr. Ruffalo and you drive your car over to one of the surrounding towns here and you spend several hours interviewing witnesses and (652) you drive back again and you have to get a meal on the way; where did you keep track of the itemization of what you did that particular day? What did you keep it in? A. I kept a record. I mean—

Q. Tell me, what in? A. I had a pad that I kept. When I went in to get my money, I had to show it, and as time went on—

Q. Now, let's not get time going on. You went out the other day and you ran up expenses and time,— A. That's right.

Q. —and you put it on something, because you can't keep it in your head? A. I did.

Q. What did you put it on? A. I had a pad I put it on.

Q. Where is that pad now? A. Well, I don't have it now.

Q. What did you do with it? A. Well, after my records were filed, I had no occasion for it.

Q. After your records were filed where? A. I believe my income tax will show the expenses. The expenses are on it.

Judge Middleton: Where are they? Where is your income tax?

(653) The Witness: Income tax record?

Judge Middleton: Yes. Where are they?

The Witness: I have them for a number of years. I have them for four or five years.

By Mr. Bierce:

Q. All right, let's get right back to this thing you put this daily expense in. Was that a loose-leaf booklet, or what was it? A. It was a pad that I—

Q. What is a "pad"? You mean a pad like that (indicating)? A. Well, similar to that (indicating) that I kept my records on.

Q. Well, let's say that you worked for a whole week or six days, when you would go out and do something. Do you make a page for each day? A. I did.

Q. All right. You say you did? A. Yes.

Q. All right. Now, then, you get a series of these pages with those itemizations of your expenses and the time you spent during a certain day and over several days; then comes a time for an accounting with Mr. Ruffalo. Tell us how you did that. A. Well, I had a sheet that I would bring in at the end of the year, say—

(654) Q. Wait a minute. The end of the year? You didn't wait until the end of the year to make this accounting you speak about; you would make it every month or every two or three months? A. Oh, yes.

Q. All right. When you are going to make an accounting, how would you do it? A. I bring it in there to show, that this is what I did, this is what I spent, this is what it cost for meals. I had a record.

Q. What did you do with those slips you showed him; where are they? A. I just don't have them now.

Q. Did you give them to Ruffalo? A. I gave them to him—I showed them to him when I got the money.

Q. Then what did you do with the slips? A. I kept the slips.

Q. Where are they now? A. Well, I have no occasion now to—

Q. You have an occasion, because we want to see them. Are they gone? A. Well, I—I just don't have them.

Q. We have tried to get from Mr. Ruffalo an itemization of your expenses. Why did you throw them away? (655) A. Well, after I filed my income tax, I had no occasion for keeping them.

* * * * *

The Witness: I have my income tax records, yes.

* * * * *